

IN THE U.S. DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

[NORTHERN DIVISION]

RECEIVED

Cedric Pugh # 182373,
Pro/Se Plaintiff

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
FEDERAL BUILDING
1000 12TH AVENUE
BIRMINGHAM, AL 35203

-Vs-

Case No. **2:06-CV-363-MEF**

Alabama Correctional Industries,)
Comm. Butch Calloway,)
Prison Health Services, Inc,)
et.al.,)
Defendants)

PLAINTIFFS RESPONSE IN OPPOSITION

Comes Now, Cedric Pugh, Pro/Se, And from herein known as the Plaintiff,
And as ordered by this Court on August 17th, 2006, Submits his
Response in Opposition to the Special Reports of the Above Named
Defendants, And in support thereof, This Plaintiff shows the follow-
ing;

2.) This Plaintiff will respond to the Defendants Special Reports
as they were recieved by this Plaintiff, And filed in this court.

Defendant, Tai Q. Chung, M.D.

This Plaintiff Avers, That the Above named defendant are respon-
sible for failing to provide adequate medical treatment to this
plaintiffs Amputated fingertip.

Upon seeing this defendant, The plaintiff was informed that his
fingertip would need surgery, And a **Skin Graft**, for the fingertip
to heal properly. This defendant performed the needed surgery, But
Failed to perform the Skin Graft, Leaving this plaintiffs fingertip
raw, And painful to the touch. This Plaintiff maintains that due
to the inadequate medical treatment, This Plaintiffs fingertip is

very tender to the touch,Constantly painful,And still remains improperly healed.

Defendant,Tai Q.Chung,M.D.,as explained in his special report, diagnosed this plaintiff as needing a Skin Graft in order for the wound to heal properly.It was not a "Possibility" of needing a skin graft,As argued by the Defendants Attorneys,[See;Office Visit notes, **February 27,2006**],In fact,The exact wording of M.D. Chung,"...Most likely skin graft from the groin to the finger."

However,This was not done,Leaving the fingertip to heal on its own, which also caused the fingertip to heal,Irregularly.

This plaintiff contends that his fingertip still bothers him today. Defendant M.D. Chung,Argues that,"...the plaintiff cannot establish a constitutional deprivation,nor can he establish that Dr.Chung acted with deliberate indifference to his constitutional rights."**Pg.#5 of Defendant Chung's Special Report**

In:Estelle v.Gamble,429 U.S.97,50 L.ed.2d.251,97 S.Ct.285(1976),The United States Supreme Court held that,"Deliberate Indifference to serious medical needs of prisoners constitutes the 'Unnecessary and wanton' infliction of pain,"**Gregg v.Georgia**,428 U.S. 153,49 L.Ed. 2d.859,96 S.Ct.2909(1976),Proscribed by the Eighth Amendment."

The defendant knew,That this wound would need a Skin Graft,Otherwise,He would not have diagnosed it in his notes of the Office Visit. The failure to do such procedure,Has resulted in the defendant causing this plaintiffs fingertip to be disfigured,And constantly painful,The fingertip is Useless.

In Defendant Chung's Special report,It clearly shows the seriousness of this Injury,The lack of zealousness to treat this wound properly, Perhaps,It is due to the Payment schedule,Perhaps it is due to the fact that Defendant Chung get's paid for the wound Once,And only Once,And therefore,The Defendant may have lost Money if he did the complete surgery,As originally planned,Either way,The Plaintiff has lost his fingertip,Is in constant pain,And cannot nor will he ever,Be able to use that fingertip for anything,This displays 'Deliberate Indifference' towards the plaintiffs medical need,In this Circuit,a serious medical need is considered "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctors attention."**Hill v.DeKalb Re'l Youth Det.Cntr.**,40 F.3d.1176,1187(11th Cir.1994),This Plaintiff

maintains, That either way, The skin graft was necessary for the proper healing of the fingertip, "In either of these situations the medical need must be "one that, If left unattended, Poses a substantial risk of serious harm." **Taylor v. Adams**, 221 F.3d.1254, 1257 (11th Cir.2000); **Adams v. Poag**, 61 F.3d.1537, 1543 (11th Cir.1995).

This plaintiffs fingertip has been left unattended, Rendering it Useless, This is 'Deliberate Indifference'.

Defendant Chung, Acknowledged the need for the Skin Graft, But did not do it, **See; Farrow v. West**, 320 F.3d.1235 (11th Cir.2003), This should be sufficient to show the deliberate indifference on the part of Defendant Chung.

Counsel for Defendant Chung argue, ".....Because Dr.Chung, at all times hereto, was a State Actor, acting in his Official Capacity, he is not subject to liability pursuant to §1983", The Plaintiff Disagrees, "Regardless of physicians employment relationship with State, any physician authorized by state to provide medical care to prisoner exercises power that is traditionally exclusive prerogative of State, for Purposes of §1983 Liability, and if physician abuses this power by demonstrating 'deliberate Indifference' to prisoners serious medical needs, prisoner suffers deprivation "under color of State law" not because state has employed bad physician, but because state has incarcerated prisoner and denied him possibility of obtaining medical care on his Own." **Conner v. Donnelly**, 42 F.3d.220 (4th Cir.1994)

Defendant Chung, Is guilty of not completing the required surgery, [i.e.], The Skin Graft to properly close the wound, Leaving this Plaintiffs fingertip virtually Useless.

CONCLUSION


Wherefore, Premises considered, This Plaintiff prays that this court will deny the Defendant Chung's request for Summary Judgment, And schedule a calender court date in order that a Pre-trial conference may be held.

This and any/all further relief that this court deems just and proper is also prayed for on this the 24 day of AUG, 2006.

Respectfully Submitted, Cedric Pugh
Cedric Pugh, Pro/Se

CERTIFICATE OF SERVICE

This is to certify, that I have served a true and correct copy of the foregoing pleading on all interested parties to this proceeding on this the 24 day of AUG 2006.


Cedric Pugh # 182373